Supreme Court, U.S.
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08-612 AUG 27 2008
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES E. STAFFORD – PETITIONER

VS.

UNITED STATES OF AMERICA-
RESPONDENT

On Petition For Writ Of Certiorari
TO THE UNITED STATES COURT OF
APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The issue before this Court is whether Petitioner can be compelled to provide information to the Government that can later be used against him in a criminal prosecution.

LIST OF PARTIES

Solicitor General of the United States
Laurie Snyder, U.S. Dept of Justice Tax Division
J. Ashton, Internal Revenue Service

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THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

1. **The opinion of the United States Court of Appeals appears at Appendix A to the petition. It was not selected for publication.**

2. **The opinion of the United States District Court appears at Appendix C to the petition. It was published in U.S. Tax Cases-Cited 2008-1.**

JURISDICTION

The date on which the United States Court of Appeals first decided Petitioner's case was April 9, 2008.

Petitioner timely filed a petition for rehearing. The date on which the United States Court of Appeals denied this petition was May 30, 2008.

Petitioner timely filed his Petition for Writ of Certiorari on August 27, 2008. It was returned to Petitioner, under Supreme Court Rule 14, paragraph 5, along with a letter from the Clerk of the Court stating a corrected Writ must be filed within 60 days from the date of the letter. This made the new filing deadline November 3, 2008.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment to the Constitution of the United States of America (pertinent part):

"...nor shall be compelled in any criminal case to be a witness against himself..."

18 U.S.C. # 6002
Whenever a witness refuses, on the bases of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to-

(1) a court or grand jury of the United States,
(2) an agency of the United States, or
(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

18 U.S.C. # 6003

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General or Deputy Assistant Attorney General, request an order under subsection (a) of this section when in his judgment-

> (1) The testimony or other information from such individual may be necessary to the public interest; and
>
> (2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

26 USC 7402 (b)

If any person is summoned under the internal revenue laws to appear, to testify, or to produce

books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

28 USC 1254 (pertinent parts)
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

STATEMENT OF THE CASE

Appellant is not a licensed attorney and cannot afford competent counsel. He, therefore, prays his pleadings should be held to less stringent standards than formal pleadings drafted by lawyers – see, Haines v Kerner, U.S. 404 U.S. 520:

> "We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers..."

On February 26, 2007, Stafford was served Form 6637 Summons Collection Information Statement which directed him to appear before J. Ashton, an Internal Revenue Service officer, to give testimony and to bring for examination a whole host of documents related to the collection of tax. Stafford appeared on the day and time appointed

and individually answered Mr. Ashton's questions. Many of the questions were answered by individually invoking the protection of the Fifth Amendment.

Mr. Ashton persuaded the Justice Department to petition the District Court to compel Stafford to provide the information he was seeking. The District Court, with jurisdiction under 26 USC 7402, issued its Order To Show Cause and compelled Stafford to appear in District Court to show cause why Appellant should not be ordered to comply with the summons. At the hearing, the Court forced the Government to admit that the compelled testimony of Stafford could be used against him in a criminal prosecution. The Court, then, decided to delay making a decision pending its further study of the case.

After hearing the Court argue in favor of Stafford's position in the hearing, it really surprised Stafford when the District Court issued an order granting the Government's petition for enforcement of the summons and denying Stafford's Motion to Dismiss and ordering Stafford to appear and comply with the summons. At the compelled hearing, Stafford complied with the order by appearing and answering the questions - some of which were answered by properly invoking his Fifth Amendment protection to select questions.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. The appeal Court's decision is in conflict with the US Supreme Court in United States v. Doe, 465 U.S. 605-623 (1984):

On page 617 the Doe Court said:

> "The act of producing the documents at issue in this case is privileged and cannot be compelled without a statutory grant of use immunity pursuant to 18 U.S.C #6002 and 6003."

On pages 2 and 3 of its Opinion (Appendix A), the Appeal Court described in detail the proceedings that take place in a so called "in camera hearing". It appears that the Court is implying that Stafford was remiss in not participating in such a hearing and that, by not participating in such a hearing, he has somehow forfeited his Fifth Amendment right. Stafford is not an attorney and, it seems unreasonable to expect a non attorney to know it was his responsibility to ask for an "in camera hearing". Neither the District Court nor the Government ever asked Stafford to participate in such a hearing. Later, after reading the Appeal Court's description of an "in camera hearing", Appellant, in his "Petition For Rehearing", specifically requested such a hearing. (see page 5 of Appellant Petition For Rehearing, Appendix D)

2. The appeal Court's decision is in conflict with the US Supreme Court in Garner v. U.S. 424 U.S. 655-656 (1976) in which it held that our:

> "...system is undermined when a government deliberately seeks to avoid the burdens of independent investigation by compelling self-incriminating disclosures."

Further, in Garner, page 653, the Supreme Court said:

> "Because the privilege protects against the use of compelled statements as well as guarantees the right to remain silent absent immunity, the inquiry in a Fifth Amendment case is not ended when an incriminating statement is made in lieu of a claim of privilege. Nor, however, is failure to claim the privilege irrelevant."

3. The appeal Court's decision is in conflict with the Fifth Amendment to the Constitution (pertinent part):

> "No person...shall be compelled in any criminal case to be a witness against himself..."

4. Petitioner has a real, not imagined, fear of providing the compelled testimony to the Respondent:

Petitioner was tried and convicted in 1992 under Cause No. CR-H-91-127-1. The only question for the jury to decide was whether Petitioner willfully and knowingly violated the law. But, the jury could only make its determination of

willfulness based on the information at their disposal. The District Court allowed the Government to show the jury a portion of a prior 1040 Stafford had filed. But, the Court would not let the jury see the 1040 as Stafford had filed it. Without the jury's knowledge and over Stafford's objection, the Court allowed the Government to "doctor" it up, by blanking out the portions of the return the Government did not want the jury to see. The Court also sealed Stafford's personal copy of the U.S.C. Title 26 and other documents and would not let the jury see the portions of those documents which Stafford relied on in filling out the return. Therefore, that jury made its decision based on the information it was allowed to have. Had Stafford been on that jury, with the limited knowledge they had, Stafford surely would also have voted "guilty".

Having gone through this experience and having served a term in prison, Petitioner is cautious about the information he provides the Respondent. Prior to instant case, Stafford in 1997, was also issued a Summons by Respondent to provide information. Stafford appeared for the Summons hearing and answered each question individually as he did in instant case. To some of the questions he invoked his Fifth Amendment protection. At the March 12, 1998 Show Cause hearing, the Court delayed making a decision and granted the Government a few days time to research to see if it could come up with a valid reason why Stafford did not have the right to the Fifth Amendment protection. In a few days the Government's counsel telephoned Stafford and asked if he had any objection to her filing a motion to withdraw her motion for contempt and close the

case. Naturally, Stafford assured her he had no objection. In her "Unopposed Motion For contempt And Close Case" (see Appendix E), she made the following statement:

> "Based upon new information received at the March 12 hearing, the government has determined that Stafford, in response to the order compelling compliance with summons, has properly invoked his Fifth Amendment privilege. The government does not wish to pursue this matter further."

In it's order signed by the Court March 28, 1998 (see Appendix F), the District Court said the following:

> Upon the unopposed motion by the United States, and for good cause shown, IT IS ORDERED that the United States motion for contempt is withdrawn, this Court's order to show cause for contempt is discharged, and the above entitled and numbered case is CLOSED."

The Government recognized that Stafford knew how to properly invoke the Fifth Amendment in 1998. In the mean time he hasn't forgotten how and he properly did it again in his hearings in instant case. In the 1998 case, Stafford tape recorded his summons hearing and provided a

written transcript to the District Court. In instant case, the Government refused to allow Stafford to record the court ordered summons hearing.

In his "Brief On Behalf Of Defendant-Appellant" to the US Court of Appeals for the Fifth Circuit, Stafford went into great detail describing how he answered the questions at the summons hearing, in instant case, before Revenue Officer, Mr. Ashton. It also describes how Mr. Ashton refused to allow Stafford to tape record the hearing. Stafford respectfully asks that this Court read these details on pages 1-3 of attached Appendix G. On page 2 of the Appendix G is an affidavit Stafford signed under penalty of perjury, as to how he answered the questions.

CONCLUSION

After investing many hours preparing this Petition For Writ Of Certiorari, Stafford has finally come to the conclusion as to why the Appeals Court affirmed the District Court's order. The reason is evidently because Stafford did not volunteer to undergo an In Camera Hearing in the judge's chambers, so that the judge could determine whether answering Respondent's questions would be incriminating.

Not being an attorney and not having the means to afford competent counsel, Stafford did not know it was his place to suggest such a hearing. He was aware of such a procedure, but understood that it was

the judge who initiated it. After reading the Appeals Court's opinion in which it described the details of this hearing, Stafford volunteered to participate in such a hearing in his "Petition For Rehearing" by the Appeals Court (see Appendix D, page 5 and Appendix D page 11, item # 4 of the CONCLUSION).

Justice certainly will not be served if this Court denies Stafford his Fifth Amendment right because he did not possess the legal knowledge of a technicality of law that is not contained in the Constitution.

Petitioner respectfully asks this Court to review his Petition and issue a Writ of Certiorari.

Respectfully submitted

James E. Stafford, Petitioner 11/1/08 Date

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 9, 2008
Charles R. Fulbruge III
Clerk

No. 07-20019
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff–Appellee

v.

JAMES E STAFFORD

Defendant–
Appellant

Appeal from the United States District Court
For the Southern District of Texas
USDC No. 4:06-MC-343

Before REAVLEY, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

---

* Pursuant to 5th CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

James Stafford received a summons from the Internal revenue Service concerning his tax liabilities for the 1999, 2000, and 2001 taxable years. The IRS was attempting to determine to what extent the government could collect the taxes Stafford owed for that three-year period. To that end, the summons required Stafford to produce documents and give testimony about his assets and liabilities from June 2005 until the date of compliance with the summons.

Stafford invoked his Fifth Amendment right not to incriminate himself and refused to produce any documents or answer most of the IRS's questions. The United States then filed suit to enforce the summons. After a hearing, the district court ordered Stafford to comply with the summons. Stafford appealed.

The Fifth Amendment's self-incrimination privilege "applies only when the accused is compelled to make a testimonial communication that is incriminating."[1] For a defendant to avail himself of the privilege, however, he must do more than simply make a blanket assertion of the privilege.[2] A court cannot just rely on a defendant's claim that responding to certain questions might tend to be incriminating. That would allow a defendant to assert the privilege even where the risk of incrimination is remote or entirely

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[1] *Fisher v. United States*, 425 U.S 391,408,96 S. Ct. 1569,1579 (1976) emphasis removed).

[2] *United States v. Goodwin*, 625 F.2d 693, 701 (5th Cir. 1980).

imagined.[3] At the same time, the defendant cannot be expected to explain in detail in open court what testimonial communication he would make that would tend to incriminate him, as that would eviscerate the very purpose of the privilege.[4] To balance these two concerns:

> [A] practice has developed whereby.the [individual asserting the privilege will allude in very general, circumstantial terms to the reasons why he feels he might be incriminated by answering a given question. The judge [will then] examine him only far enough to determine whether there is reasonable ground to apprehend danger to the witness from his being compelled to answer. If the danger might exist, the court must uphold the privilege without requiring the witness to demonstrate that a response would incriminate him, the latter inquiry being barred by the privilege itself.[5]

In short, this inquiry requires a court to examine the appropriateness of the privilege on an individualized basis so that the court can determine whether the defendant faces a real risk

---

[3] *United States v. Melchor Moreno*, 536 F.2d 1042, 1046 (5th Cir. 1976).

[4] *Id.*

[5] *Id.* (emphasis in original).

of incriminating himself by answering a specific question (or group of related questions). Here, Stafford invoked the privilege to prevent the IRS from obtaining documents on his financial situation and from asking him at least some questions related to that topic. As far as refusing to answer questions, Stafford has not detailed any of the questions he refused to answer. That lack of detail deprived the district court of its ability to judge the risk posed to Staford with respect to any given question. As far as Stafford's refusal to turn over documents, Stafford made no attempt to explain how the testimonial aspect of his turning over the relevant documents could tend to incriminate him.[6] Indeed, he makes no attempt to tether his concerns about being prosecuted with any of the varied sub-categories of documents subsumed by the IRS's document request (e.g. stocks, life insurance policies, checkbooks, cancelled checks). Instead, he tries to rely on a generalized fear based on his past interactions with the IRS that any document that could possibly be covered by the request would tend to incriminate him. That is not a proper use of the privilege.

AFFIRMED

---

[6] See United States v. Schmidt, 816 F.2d 1477, 1480-81 (10th Cir. 1987) (explaining how turning over documents can have a testimonial aspect that can be protected by the Fifth Amendment).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT
OF APPEALS
FILED
MAY 30 2008
CHARLES R.
FULBRUGE III
CLERK

No. 07-20019

UNITED STATES OF AMERICA
Plaintiff – Appellee
v.

JAMES E. STAFFORD
Defendant – Appellant

Appeal from the United States District Court for the Sourthern District of Texas, Houston

---

ON PETITION FOR REHEARING

Before REAVLEY, BENAVIDES AND CLEMENT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

Thomas M Reavley

United States Circuit Judge
REHG

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Petitioner,	$	MISCELLANEOUS
	$	NO. H-06-0343
VS.	$	
	$	
JAMES E STAFFORD,	$	United States Courts
	$	Southern District
Respondent	$	of Texas

ENTERED
OCT 25 2006
Michael N. Milby, Clerk of Court

ORDER

I.

Before the Court are the government's petition to enforce an Internal Revenue Service summons [#1], the respondent, James E. Stafford's motion to dismiss the government's petition [#4], the government's response to the respondent's motion to dismiss [#5], and the respondent's reply to the government's response [#6]. The Court has reviewed the documents and determines that the government's petition to enforce should be granted and the respondent's motion to dismiss should be denied.

II.

An administrative summons was issued to the respondent pursuant to 28 U.S.C. S 7602 requesting that the respondent appear and give testimony relating to the collectibility of assessed taxes for tax years 1999, 2000 and 2001. The testimony sought related to the records requested. In addition to testimony, the respondent was directed to bring all documents and records reflecting his assets and liabilities for the period June 1, 2005, to the date of compliance. Although the respondent appeared, he answered few, if any, questions and failed to produce the records and documents requested.

The respondent contends that the government's request to enforce its summons should be dismissed because he obeyed the summons when he appeared and "properly" asserted his Fifth Amendment right as to specific questions. As authority, the respondent cites to *United States v. Dickerson*, 413 F.2d 1111 (7th Cir. 1969), among other cases. The respondent also points to a time in the past when he provided information on a 1040 return that was used to convict him of violating federal law. Finally, respondent asserts that in a previous case, H-97-MC-0516, he asserted his Fifth Amendment right and, after review, the government withdrew its motion for contempt.

III.

The respondent's reliance on *Dickerson* is misplaced. In *Dickerson*, the defendant sought to

suppress evidence that had been obtained by the Internal Revenue Service during a criminal investigation. The Court held that because no warning had been given when the investigation shifted from an administrative investigation to one that was criminal in nature, the statements given were suppressed. *Id.* at 1117.

In the case at bar, there is no criminal investigation ongoing. Moreover, the information sought is for the purpose of collecting assessed taxes for tax years 1999, 2000 and 2001. While a taxpayer may assert his Fifth Amendment privilege to questions that extend beyond the documents sought, it does not protect the taxpayer's personal business records. *United States v. Doe*, 465 U.S. 605, 613 (1984).

Therefore, the government's petition to enforce summons is Granted and the petitioner's motion to dismiss is Denied. It is ORDERED that the respondent comply with the summons, appear on the 2nd day of November, 2006, at 10.00 o'clock a.m. at 8701 South Gessner, Houston, Texas before James Ashton or his designee and produce the records and testimony called for in the summons.

SIGNED and ENTERED this 25th day of October, 2006.

Kenneth M. Hoyt
United States District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff - Appellee

v. No. 07-20019

JAMES E STAFFORD

Defendant - Appellant

APPELLANT'S PETITION FOR REHEARING

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

INTRODUCTION

The appellant, James E. Stafford, hereby moves the Court to reconsider certain of his arguments on appeal which were decided in the Appellee's favor in this Court's decision of April 9, 2008. Appellant, again, reminds this court that he is not a licensed attorney and prays his pleadings should be held to less stringent standards than

formal pleadings drafted by lawyers – see Hayes v Western Weighing and Inspection Bureau, 838 F.2d. 1434 (5th Cir. 1988), Haines v Kerner, 404 U.S. 519-521, and Bruce v Wade, 537 F.2d. 850 (5th Cir. 1976).

ISSUES BELIEVED MISAPPREHENDED, MISAPPLIED OR OVERLOOKED

I. Appellant believes the Court misapprehended the facts and misapplied United States v. Schmidt, 816 F.2d 1477, 1480-81 (10th Cir. 1987)

In the Schmidt case, appellants appeared with their counsel at the IRS office. Counsel told Revenue Agent Richard Kawabata that appellants did not bring and would not produce the requested documents.

In instant case, on two separate occasions, Stafford appeared before Revenue officer J. Ashton, with books and records, and answered each question asked by Mr. Ashton. Some of the questions were answered in the affirmative, some were answered in the negative, some were answered by giving specific information asked, and some were answered by invoking Stafford's Fifth Amendment protection. (See Appellant's Affidavit concerning these hearings on page 9 of his Appellant Brief.) In other words, Stafford did precisely what the Schmidt Court, on pages 1481-1482 said one must do in order to validly claim the Fifth Amendment:

> Appellant's generalized fear of criminal prosecution for a violation of the tax laws is an insufficient bases for asserting a blanket claim of the Fifth Amendment privilege in refusing to produce any of the documents requested by the summonses... In order to validly raise the Fifth Amendment privilege, appellants must comply with the instructions of the summonses. At the appropriate time, appellants may interpose their claim of Fifth Amendment privilege pertaining to specific documents and in response to individual questions upon their reasonable belief that a compulsory response by them to these testimonial matters will pose a substantial and real hazard of subjecting them to criminal liability.

Perhaps this Court overlooked a key element in Stafford's Appellant Brief. Stafford understands how to properly invoke his Fifth Amendment protection. On pages 12-14 of his Appellant's Brief he told how he successfully prevailed in a similar Summons enforcement proceeding in 1998. The Government filed its "unopposed Motion For Contempt And Close Case" (see RE #6, p.39-40) in which is contained the following statement:

> "Based upon new information received at the March 12 hearing, the government has determined that

> Stafford, in response to the order compelling compliance with summons, has properly invoked his Fifth Amendment privilege."

Stafford knew how to properly invoke his Fifth Amendment privilege in 1998. In the mean time he hasn't forgotten how and he properly did it again in his hearings before Mr. Ashton.

II. Appellant believes the Court misapprehended the facts in stating, "Here Stafford invoked the privilege to prevent the IRS from obtaining documents on his financial situation and from asking him at least some questions related to that topic. As far as refusing to answer questions, Stafford has not detailed any of the questions he refused to answer".

As stated in Segment I, above, Stafford did not prevent Mr. Ashton from asking any questions. He asked many questions and Stafford answered all of them. Stafford also provided some physical documentation to Mr. Ashton. An example he specifically remembers turning over is documentation of automobile ownership.

The court's statement "As far as refusing to answer questions, Stafford has not detailed any of the questions he refused to answer" is really puzzling to Appellant. He really does not know

what the Court means by this. Stafford stated in detail in segment I, above, how he answered each question. The District Court had the opportunity to ask anything of Stafford. The transcript of the District Court hearing shows that the Honorable Judge Hoyt was arguing Stafford'scase for him. That is why Stafford was shocked when he received Judge Hoyt's decision.

Judge Hoyt did not suggest an in camera hearing so that he could determine whether any of the questions were privileged. Stafford would have been willing to submit to such a hearing, and still would. It is Stafford's understanding that the Judge has to be the one to initiate such a hearing. If, in fact, it is the appellant's responsibility to ask for an in camera hearing, let the record show that Stafford, hereby, requests such a hearing. Had Stafford recorded the Court-ordered hearing before Mr. Ashton on October 23, 2006, documentation of all the questions and all Stafford's answers could have been available to this Court. On pages 9 and 10, of Appellant's Brief, Stafford detailed how he provided prior notification of his intention to record the hearing and of Mr. Ashton's refusal to let him tape it. Interestingly enough, when Stafford was allowed to tape a similar hearing in 1998, he furnished a written transcript of the recording to the court and he prevailed.

III. Appellant believes the Court misapprehended the facts in stating "Indeed he makes no attempt to tether his concerns about being prosecuted with

> **any of the varied sub-categories of documents subsumed by the IRS's document request (e.g., stocks, life insurance policies, checkbooks, cancelled checks)."**

On pages 17 and 18 of his Appellant's Brief, Stafford specifically addressed the possibility that some categories of information could be more likely to incriminate than others. He requested that, if the District Court's order is not overturned, it should be limited to the information the Government told the Court it was seeking in its Response in Opposition to Respondent's Motion To Dismiss. Stafford, then, quoted the following statement made by the Government in its Response in Opposition:

> "The government contends that the testimonial aspect of producing records in response to the summons is so slight as to not implicate the Fifth Amendment. The records only pertain to current assets and liabilities so that the government can make a collection determination."

It seems logical to Appellant that if the government was really serious in the above two sentences, it would have asked the District Court to grant use immunity pursuant to 18 U.S.C. 6002 and 6003.

FINALLY, in concluding this discussion of Segment # III, Appellant implores this Court to very carefully consider what Appellant is about to say here:

Form 6637 "Summons Collection Information Statement (normally referred to as the "Summons") that the IRS taped to Stafford's front door, is an official part of this court record. This summons stated:

> "You are hereby summoned and required to appear before J.Ashton, an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown: Annual periods ending December 31,1999; December 31, 2000 and December 31, 2001.
>
> All documents and records you possess or control regarding assets, liabilities, or accounts held in your name or for your benefit which you wholly or partially own, or in which you have a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, cancelled checks, saving account passbooks, records or certificates of deposit for the period:
>
> From June 1, 2005 to the date of full compliance with this summons.

> Also include all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies."

In looking over this list, it is not hard to imagine how compelled testimony concerning some (if not all) of these items could clearly violate one's right to remain silent. It is also easy to see that compelled testimony concerning bank statements could more clearly violate one's right than being compelled to turn over a health insurance policy. But, what is perhaps, even more disturbing, is an additional sentence in the Summons that reads as follows:

> "We have attached a blank statement to guide you in producing the necessary documents and records."

To Appellant's knowledge, the "blank statement" is not a part of this court's records and Appellant cannot find a copy of it. During both the hearings before Mr. Ashton, Stafford believes he was reading from this "blank statement" when asking questions. If this Court ultimately decides against Appellant, and, unless this Court clarifies the issue, Stafford is certain the IRS will take that to mean that the Court ordered Stafford to obey the wording actually on the Summons as well as answer all the questions on the "blank statement" without invoking his Fifth Amendment Right.

IV. Appellant believes the Court misapprehended the facts in saying "Instead, he tries to rely on a generalized fear based on his past interactions with the IRS that any document that could possibly be covered by the request would tend to incriminate him."

Stafford has already demonstrated in Segment III, above, how he did not object to "all" Mr. Ashton's questions nor to "all" his requests for documents, but, that he did in fact provide some of the information. His fear of the IRS, however, is certainly not "generalized". The things they have done to him (enumerated below) have convinced him that they are pretty upset with him and are looking for ways to make his life difficult:

A. He experienced them taking information he provided them and blacking out some of the information and showing the jury only what they wanted the jury to see. The jury used Stafford's "doctored up" information to convict him.

B. He was incarcerated in a half-way house for six months and was forced to pay the half-way house thousands of dollars while his family was getting deeper in debt. He was incarcerated in federal prison for one year and was not able to provide for his family. This forced his family to go deeper and deeper in debt, from which it still has not recovered.

C. Prior to this the IRS confiscated many thousands of dollars of his salary over a period of months until his job was terminated.

D. His career was destroyed. He has not been employed at a permanent, good paying job since his incarceration over thirteen years ago. At age 65, he is in considerable debt, does not have a retirement fund, and has few assets of much value – thanks to the IRS.

Yes, Appellant has not a "generalized" but very specific fear of the IRS. It is evident to him that the IRS is very upset with him and has targeted him for vengeance.

V. Appellant believes the Court overlooked the consideration of granting use immunity in accordance with the Doe Court.

In Appellants Brief he asked that the District Court's order be sustained only if he is granted use immunity pursuant to 18 U.S.C. 6002 and 6003. (See United States v. Doe, 465 U.S. 605, 613 (1984)) in which the Doe Court said:

The act of producing the documents at issue in this case is privileged and cannot be compelled without a statutory grant of use immunity pursuant to 18 U.S.C. & 6002 and 6003.

CONCLUSION

Appellant respectfully requests that this Court not compel him to provide the Government information they might use to prosecute him again. He respectfully asks the Court to:

1. **reverse the Order of the District Court**

2. **or, in the alternative, require the District Court's order be contingent upon Appellant being granted use immunity under 18 U.S.C. 6002 and 6003**

3. **or, in the alternative, limit the information Appellant must give to the Government to current assets and liabilities**

4. **or, in the alternative, have Appellant appear at an in camera hearing and let the District Court decide on any information that is not protected by the Fifth Amendment.**

Whatever this Court decides, please do not require Appellant to answer questions on some "blank statement" (see segment III, above) that this Court has not seen and that is not a part of the official record in this case.

Respectfully Submitted,

(signed by James E. Stafford) **5-17-08**

James E Stafford, pro se
2006 Round Spring Drive
Humble, TX 77339

Dated

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Petitioner,	$	MISCELLANEOUS
	$	NO. H-06-0343
VS.	$	
	$	
JAMES E STAFFORD,	$	United States Courts
		Southern District
Respondent	$	of Texas
		FILED
		MAR 24 1998
		Michael N. Milby, Clerk of Court

UNOPPOSED[1] MOTION TO WITHDRAW
MOTION FOR CONTEMPT AND CLOSE CASE

TO THE HONORABLE JUDGE OF SAID COURT:

---

[1] On March 23, 1998 at 4:55 p.m. the undersigned attorney talked to James Stafford, respondent, by telephone. Mr. Stafford stated he was not opposed to the motion to withdraw motion for contempt and close case. Mr. Stafford stated he had not received a copy of this motion which was sent by U.S. certified mail, return receipt requested, to Mr. Stafford on or about March 16, 1998. The undersigned attorney faxed a copy to Mr. Stafford on the morning of March 24. Mr. Stafford stated to the undersigned attorney that he read the motion and that he did not oppose the motion.

The United States moves to withdraw its motion for contempt and moves to close this case, and would state to the Court the following:

1.

The show cause hearing for contempt in this case was held on March 12 at 10:00 a.m. The undersigned attorney and Stafford were present. Stafford presented to the undersigned attorney a copy of his response to the government's motion for contempt. Stafford's motion had been filed on March 10, but was not received by the undersigned attorney until the hearing. Based upon new information received at the March 12 hearing, the government has determined that Stafford, in response to the order compelling compliance with summons, has properly invoked his Fifth Amendment privilege. The government does not wish to pursue this matter further.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Petitioner,	$	MISC. H-97-516
	$	
VS.	$	
	$	
JAMES E STAFFORD,	$	United States District Court
	$	Southern District
Respondent	$	of Texas

ENTERED
MAR 30 1998
Michael N. Milby, Clerk

UNOPPOSED ORDER

Upon the unopposed motion by the United States, and for good cause shown, IT IS ORDERED that the United States motion for contempt is withdrawn, this Court's order to show cause for contempt is discharged, and the above entitled and numbered case is CLOSED.

SIGNED at Houston, Texas, on this the 28th day of March, 1998.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

I. The District Court's Order Should Be Overturned Because Of The Fifth Amendment

The Fifth Amendment clearly protects Stafford from giving the Government information it could use against him in a criminal prosecution. See Reisman vs. Caplin, 375 U.S. 440; United States v. Doe, 465 U.S. 605, United States v Loren C. Troescher, 99 F.3rd. 933 (9th Cir. 1996), and Boyd v. United States, 116 U.S. 616, 6 S. Ct. 29 L.Ed. 746 (1886),

Stafford appeared before Revenue Officer Ashton two times: The first time upon receipt of the Summons and the second time when ordered by the District Court. At both meetings Stafford invoked his Fifth Amendment protection to specific questions asked by Mr. Ashton. He never gave a blanket fifth amendment objection and he did not refuse to answer any questions.

In its "United States of America's Response in Opposition to Respondent's Motion To Dismiss" (RE # 5, p 32) the Government asserted that: "Mr. Stafford has failed to demonstrate that he has come forward and asserted the Fifth Amendment privilege in such a particularized manner." This is patently false and is astonishing that Special Assistant U.S. Attorney R. Scott Shieldes would make such a statement. He was not in attendance at either of these hearings. The only ones at the hearings were Stafford, Internal Revenue Officer Ashton, and our Creator. Mr. Ashton certainly has never tried to tell Stafford that he offered a blanket Fifth. In fact, Mr. Ashton and Stafford discussed

this issue more than once. Stafford made it clear to Mr. Ashton that he was not giving a blanket refusal to answer his questions. Stafford specifically told him that he did not know how he would answer his questions until he heard them. To make this perfectly clear, Stafford, hereby, produces the following affidavit:

> I, James E. Stafford, under penalty of perjury, do hereby affirm that I have never offered a blanket fifth amendment objection to any Internal Revenue Officer or official. I further confirm that in my two meetings with Mr. Ashton, I answered his questions, individually, and invoked my fifth amendment protection to some of the specific questions.
>
> Signed:
>
> _____ _____
>
> James E. Stafford, Appellant Date

Stafford further wants the Court to know that Assistant U.S. Attorney, Mr. Shieldes tried to make the same assertion at the Show Cause Hearing on October 23, 2006 (RE # 18, p. 14, lines 1-17). Although the transcript of the hearing left out Appellant's rebuttal, Appellant definitely rebutted this assertion in open court. After this experience in open court, Appellant brought a tape recorder with him to the court ordered meeting with Mr.

Ashton. However, Mr. Ashton refused to proceed with the meeting unless Appellant agreed not to tape it. He said he would have to also record it, but that he had not received Stafford's notice he left on Mr. Ashton's phone mail and he was not prepared. All of this refusal was done in spite of the fact that on page 5 of his "Motion For Stay Pending Appeal" (RE # 10, p. 57, Appellant made the following statement:

> "At the upcoming November hearing, which he plans to record, respondent is truly between the proverbial rock and a hard place." (referring to the court ordered meeting with Mr. Ashton on November 2, 2006)

Not wanting to agitate Mr. Ashton, Stafford agreed not to tape it. That should teach Stafford a lesson to never proceed with such a meeting without a tape recorder running.